

February 22, 2000

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VIA US MAIL AND FACSIMILE

David K. Clay  
Senior Attorney  
United States Environmental Protection Agency  
Region 4  
Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, GA 30303-8909

Re: Collierville Superfund Site; Tolling Agreement Extension

Dear Mr. Clay:

This letter transmits the executed tolling agreement on the Collierville Superfund Site, which we received Friday, February 18. We appreciate your courtesy in the matter. I am executing the agreement pursuant to authorization from Carrier's inside counsel, Azuwuikwe H. Ndukwe, Esq.

As we discussed this morning, I will be out of the office starting tomorrow because of surgery, and returning in early March. Carrier proposes to respond to the administrative order on consent and the request to recover oversight costs on March 17. Please let my office know if those dates will present a problem.

We propose to respond on the 17<sup>th</sup> with information showing which costs Carrier has already paid and which bills remain unpaid, among other information. It will aid our discussions if there are no outstanding factual issues. At least according to Carrier's understanding, all but a few thousand dollars of the oversight cost claim were incurred before October 1993.

We also propose to respond with comments on the proposed administrative order on consent. We hope that our technical consultant and the RPM will have had their discussions about the projected oversight costs by that time. After our call, I spoke again with Craig Wise, who will be calling the RPM shortly to address the future oversight cost issue. I apologize for any



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confusion, and hope that the technical people will soon sort out the projections of hours, as we had discussed. Again, thanks for your courtesy.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell V. Randle". The signature is fluid and cursive, with the first name "Russell" being more prominent.

Russell V. Randle  
Counsel for Carrier Corporation

RVR/rvr

Enclosure

**TOLLING AGREEMENT FOR THE CARRIER AIR CONDITIONING  
SUPERFUND SITE**

This Tolling Agreement ("Agreement") is entered into between the Environmental Protection Agency ("EPA") on behalf of the United States of America ("United States"), and Carrier Corporation, a Delaware Corporation with an operation located at Collierville, Tennessee ("Carrier") and extends the previously entered into tolling agreement between the parties with an effective date of November 24, 1999. The undersigned representatives of the parties certify that s/he is fully authorized to enter into terms and conditions of the Agreement and to execute and bind the United States or Carrier, as the case may be, to this document. The purpose of this Agreement is to facilitate discussions between EPA and Carrier for response costs without recourse to litigation, if possible.

The Parties hereby agree as follows:

1. The United States contends that it presently has a potential cause of action against Carrier pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. § 9607. The United States also contends that it will have future costs. These potential causes of action relate to reimbursement of costs with respect to the Carrier Air Conditioning Superfund Site located in Collierville, Tennessee ("Site"), and not to any other Site or matter.
2. EPA and Carrier enter into this Agreement in order to pursue good faith negotiations to attempt to resolve the United States' causes of action referred to in Paragraph One without litigation. It is acknowledged to be in the interest of the United States and Carrier to attempt to resolve any disagreements without litigation, if possible.
3. The United States and Carrier agree that the period of time commencing on November 30, 1999, and ending June 30, 2000, inclusive, shall not be included in computing the time limited by any statute of limitations for filing the causes of action generally described in Paragraph One of this Agreement, if any statute of limitations is applicable for such causes of action. Carrier also agrees that the period of time commencing on November 30, 1999, and ending on June 30, 2000,

inclusive, will not be asserted in whole or in part, as a basis for a defense of laches or similar defense concerning the timeliness of commencing a civil action for recovery of the response costs incurred or to be incurred by the United States in connection with the Site. Carrier further agrees not to assert, plead, or raise against the United States in any fashion, whether by answer, motion, or otherwise, any defense or avoidance based on the running of any statute of limitations during the period of time commencing on November 30, 1999, and ending June 30, 2000, inclusive, and that any statute of limitations shall be tolled during and for the period of time commencing November 30, 1999, and ending June 30, 2000. This period shall not be included for the purposes of computing interest on any obligation which is agreed to or found to be due.

4. This Agreement does not constitute an admission of any fact or liability on the part of Carrier, nor does it affect the assertion of any defense to liability except as specifically provided in Paragraph Three of this Agreement. Carrier specifically reserves all its rights and defenses against any claims to be asserted by the United States, except as expressly tolled by this agreement, including the argument that the statute of limitations has already expired.
5. This Agreement does not constitute any admission or acknowledgment on the part of the United States regarding any fact relating to the statute of limitations under CERCLA, or any other applicable statute or laws, nor does it constitute an agreement by the United States that any defense to liability as to costs under CERCLA is available to the undersigned. The United States reserves the right to assert that no statute of limitations applies.
6. Upon two weeks written notice, the United States may terminate negotiations and commence suit at any time thereafter without affecting the waiver in Paragraph Three.
7. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by any of the parties or agent of the parties that is not contained in this written contract shall be valid or binding, and this contract may not be enlarged, modified, or altered except in writing signed by the Parties and endorsed herein.

8. This Agreement shall be effective the \_\_\_\_ day of \_\_\_\_\_, 2000.

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

BY: \_\_\_\_\_ Date \_\_\_\_\_  
Franklin E. Hill  
Chief,  
Program Services Branch  
Waste Management Division  
U.S. EPA Region 4

Carrier Air Conditioning Superfund Site Tolling Agreement  
Signature Page

Carrier Corporation consents to the terms and conditions  
of the Agreement on the 22nd day of February 2000.

BY: Russell V. Randle  
(Name of Signing Party)

FOR: Carrier Corporation

Russell V. Randle  
(Address) 10 Patton Boggs LLP

2550 M Street NW  
Washington DC 20037